

Nicholas J. Henderson, OSB #074027  
nhenderson@portlaw.com  
MOTSCHENBACHER & BLATTNER, LLP  
117 SW Taylor St., Suite 300  
Portland, OR 97204  
Telephone: (503) 417-0508  
Facsimile: (503) 417-0528

Proposed Attorneys for Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re

CHRISTIAN S. RADABAUGH, SR.

Debtor-in-Possession.

Bankruptcy Case No. 18-34244-pcm11

DEBTOR'S NOTICE OF INTENT AND  
MOTION TO SELL ASSETS OUTSIDE  
THE ORDINARY COURSE OF  
BUSINESS, AND NOTICE OF HEARING

PLEASE TAKE NOTICE that the Debtor, Christian S. Radabaugh Sr., intends to, and moves the Court for an order authorizing him to sell his cattle outside the ordinary course of his business, and free and clear of liens pursuant to 11 U.S.C. § 363, as specifically set forth below.

PLEASE TAKE FURTHER NOTICE that, **if you wish to object to the proposed sale of the Debtor's cattle, you must file an objection no later than April 24, 2019, and must attend the hearing scheduled for April 25, 2019, at 10:00 a.m.** Objections, if any, must be filed with the United States Bankruptcy Court for the District of Oregon, 1050 SW 6th Ave #700, Portland, OR 97204. A copy of any objection filed must also be served upon Counsel for the Debtor, Nicholas J. Henderson, Motschenbacher & Blattner LLP, 117 SW Taylor Street, Suite 300, Portland, OR 97204.

PLEASE TAKE FURTHER NOTICE that a hearing will be held on April 25, 2019, at 10:00 a.m., at the U.S. Bankruptcy Court, Courtroom #1, 1050 SW 6th Ave #700, Portland, OR 97204.

## **PROPOSED SALE**

1. Debtor intends to begin selling all of his cattle that is subject to a lien in favor of GP, LLC (the “GP Cattle”). GP holds a security interest in the GP Cattle, in the amount of \$1,700,000. Debtor intends to sell his the GP Cattle at private, arms-length, market price sales beginning on April 26, 2019, subject to the Additional Terms of Sale set forth below.
2. If the Debtor is unable to sell all of his GP Cattle by May 30, 2019, Debtor intends to sell his remaining GP Cattle at auction on May 30, 2019, through Shasta Livestock Auction Yard / Western Video Market.

## **ADDITIONAL TERMS OF SALE**

3. Prior to any sale, Debtor shall notify GP by email at least two days in advance of any sale of (a) the quantity of GP Cattle to be sold; (b) the name, address, telephone number, and email address of the purchaser; (c) the purchase price; (d) and the time and location of the closing of the proposed sale. The Debtor shall, simultaneously when he provides the above notifications to GP, provide GP with all paperwork associated with the proposed sale.
4. All private sales of GP Cattle must be approved by GP, LLC.
5. Prior to any sale, the GP Cattle must be brand inspected by an Oregon state certified brand inspector, and the brand inspector shall deliver to GP, LLC a brand certificate showing the cattle to be sold belongs exclusively to the Debtor.
6. GP must be present at the closing of the sale. Payment for the GP Cattle must be made payable solely to GP, LLC, and shall be delivered to GP, LLC upon the closing of each sale, not later than immediately prior to the delivery of the GP Cattle to any buyer.
7. Debtor shall not seek to use proceeds from the sale of GP Cattle.

8. All proceeds of the auction sale described in paragraph 2 above (the “Shasta Sale”), after paying Shasta Livestock Company for conducting the sale, shall be impressed with GP, LLC’s lien and wire transferred to the trust account of GP, LLC’s counsel, Howard M. Levine, for the sole benefit of GP, LLC. Howard M. Levine shall promptly, following receipt of the Shasta Sale proceeds, pay said funds over to GP.

9. In the event that Shasta Livestock Auction yard determines, in its sole discretion, that the Debtor’s cattle cannot be sold at the Shasta Sale, Debtor shall engage Shasta Livestock Company to sell his cattle at the next available video auction, and all terms and conditions stated in this Notice shall apply.

10. In the event Debtor is able to pay GP, LLC in full, from the sale of GP Cattle or otherwise, Debtor may rescind his intention to sell the GP Cattle.

## **BACKGROUND**

11. Debtor filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) on December 7, 2018, in the United States Bankruptcy Court for the District of Oregon (the “Bankruptcy Court”).

12. Debtor remains in possession of his assets and continues to manage his affairs as debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

13. Debtor is an individual residing in Redmond, Oregon. Debtor is in the business of, among other things, raising livestock for sale.

14. Debtor’s livestock is encumbered by a security interest granted to GP, LLC, which was perfected on April 13, 2017, by the filing of a Farm Products Financing Statement Standard Form, EFS-1 No. 91156751 and a UCC-1 Financing Statement filed on April 13, 2017, No. 91156100.

15. As of the date of this Notice, the Debtor owes GP, LLC approximately one million seven hundred thousand dollars (\$1,700,000).

16. To accomplish an agreement with GP, LLC, and to reduce interest and cattle-related expenses, the Debtor intends to sell all of his GP Cattle and pay the proceeds to GP, LLC.

### **RELIEF REQUESTED**

17. The relief requested herein by Debtor is based on the Court's authority pursuant to 11 USC § 105(a) and 11 USC § 363.

18. Debtor requests entry of an order in the form attached hereto as **Exhibit 1**, authorizing the sale of GP Cattle outside the ordinary course of business.

### **ARGUMENT**

19. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1).

20. The debtor must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

21. Debtor believes proposed sale will enable him to significantly reduce interest accrual and potential litigation expenses related to GP, LLC. Debtor will also be able to forego purchasing feed for the GP Cattle, as well as pasture lease deposits and payments that will be required for the approaching summer season. Debtor believes he will be able to obtain fair market prices for the GP Cattle.

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22. WHEREFORE, Debtor requests the Court enter the order attached hereto as

**Exhibit 1**, authorizing the Debtor to sell the GP Cattle on the terms and conditions set forth above.

DATED: April 17, 2019

MOTSCHENBACHER & BLATTNER LLP

By:/s/Nicholas J. Henderson

Nicholas J. Henderson, OSB #074027

Attorneys for Debtor-in-Possession

Christian S. Radabaugh Sr.

**EXHIBIT 1**  
**PROPOSED ORDER**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re  
CHRISTIAN S. RADABAUGH, SR.  
Debtor-in-Possession.

Bankruptcy Case No. 18-34244-pcm11

ORDER RE: DEBTOR'S NOTICE OF  
INTENT AND MOTION TO SELL  
ASSETS OUTSIDE THE ORDINARY  
COURSE OF BUSINESS

This matter came before the Court on April 25, 2019, on Debtor's Notice of Intent and Motion for Authority to Sell Assets Outside the Ordinary Course of Business, and Notice of Hearing [ECF No. \_\_\_\_] (the "Motion"). The Court, having reviewed the Motion and having heard arguments of counsel, hereby ORDERS as follows:

1. Debtor's MOTION is GRANTED;
2. Debtor is authorized to sell the GP Cattle (as defined in the Motion) on the terms and conditions set forth in the Motion.

###

I certify that I have complied with the requirements of LBR 9021-1 (a)(2)(A).

Presented by:

Motschenbacher & Blattner LLP

/s/ Nicholas J. Henderson

Nicholas J. Henderson, OSB No. 074027  
Motschenbacher & Blattner LLP  
117 SW Taylor Street, Suite 300  
Portland, OR 97204  
Email: [nhenderson@portlaw.com](mailto:nhenderson@portlaw.com)  
Phone: (503) 417-0508

## **PARTIES TO SERVE**

ECF Electronic Service:

- SARAH FLYNN [sarah.flynn@usdoj.gov](mailto:sarah.flynn@usdoj.gov)
- MARTIN E HANSEN [meh@francishansen.com](mailto:meh@francishansen.com),  
[kathy@francishansen.com](mailto:kathy@francishansen.com); [mike@francishansen.com](mailto:mike@francishansen.com); [carol@francishansen.com](mailto:carol@francishansen.com); [jerry@francishansen.com](mailto:jerry@francishansen.com); [regina@francishansen.com](mailto:regina@francishansen.com)
- NICHOLAS J HENDERSON [nhenderson@portlaw.com](mailto:nhenderson@portlaw.com),  
[tsexton@portlaw.com](mailto:tsexton@portlaw.com); [mperry@portlaw.com](mailto:mperry@portlaw.com); [hendersonnr86571@notify.bestcase.com](mailto:hendersonnr86571@notify.bestcase.com)
- HOWARD M LEVINE [hlevine@sussmanshank.com](mailto:hlevine@sussmanshank.com),  
[jhume@sussmanshank.com](mailto:jhume@sussmanshank.com), [ecf.howard.levine@sussmanshank.com](mailto:ecf.howard.levine@sussmanshank.com), [howard-levine-5487@ecf.pacerpro.com](mailto:howard-levine-5487@ecf.pacerpro.com)
- KATHRYN PERKINS [kathryn.e.perkins@usdoj.gov](mailto:kathryn.e.perkins@usdoj.gov)
- TROY SEXTON [tsexton@portlaw.com](mailto:tsexton@portlaw.com),  
[nhenderson@portlaw.com](mailto:nhenderson@portlaw.com), [mperry@portlaw.com](mailto:mperry@portlaw.com), [troy-sexton-4772@ecf.pacerpro.com](mailto:troy-sexton-4772@ecf.pacerpro.com)
- US Trustee, Portland [USTPRegion18.PL. ECF@usdoj.gov](mailto:USTPRegion18.PL. ECF@usdoj.gov)

Service via First-Class Mail:

ODR Bkcy  
955 Center St NE  
Salem, OR 97301-2555

## **CERTIFICATE OF SERVICE**

I hereby certify that on April 17, 2019, I served the foregoing DEBTOR'S NOTICE OF INTENT AND MOTION TO SELL ASSETS OUTSIDE THE ORDINARY COURSE OF BUSINESS, AND NOTICE OF HEARING electronically through ECF/PACER on:

- SARAH FLYNN sarah.flynn@usdoj.gov
- MARTIN E HANSEN meh@francishansen.com, kathy@francishansen.com;mike@francishansen.com;carol@francishansen.com;jerry@francishansen.com;regina@francishansen.com
- HOWARD M LEVINE hlevine@sussmanshank.com, jhume@sussmanshank.com,ecf.howard.levine@sussmanshank.com,howard-levine-5487@ecf.pacerpro.com
- KATHYRN PERKINS kathryn.e.perkins@usdoj.gov
- US Trustee, Portland [USTPRegion18.PL.ECF@usdoj.gov](mailto:USTPRegion18.PL.ECF@usdoj.gov)

I further certify that on the date below I served the foregoing document on the following individuals via first-class mail, postage prepaid:

See the attached service list.

MOTSCHENBACHER & BLATTNER, LLP

/s/ Nicholas J. Henderson  
Nicholas J. Henderson, OSB #074027  
Of Attorneys for Debtor

Label Matrix for local noticing

0979-3

Case 18-34244-pcm11

District of Oregon

Portland

Wed Apr 17 16:33:27 PDT 2019

Agco Finance, LLC

c/o Corporation Service Co., Reg. Agent  
1127 Broadway Street NE, Ste. 310  
Salem, OR 97301-1139

3 Springs Ranch  
6661 S 3 SPRINGS RANCH RD  
Powell Butte, OR 97753-2000

Agco Finance, LLC  
PO Box 2000  
Johnston, IA 50131-0020

Capital Bank

Attn: Bankruptcy  
1 Church St. # 300  
Rockville, MD 20850-4190

Alves Family Trust  
2312 Condor Dr.  
Redmond, OR 97756-1263

Bank Of America  
4909 Savarese Circle  
F11-908-01-50  
Tampa, FL 33634-2413

Chase Card Services

Correspondence Dept  
Po Box 15298  
Wilmington, DE 19850-5298

Capital One  
Attn: Bankruptcy  
Po Box 30285  
Salt Lake City, UT 84130-0285

Central Oregon Ranch Supply  
PO Box 103  
Redmond, OR 97756-0010

Crook County Property Taxes  
200 NE 2nd St Ste 100  
Prineville, OR 97754-1911

Childs Law Firm, LLC  
Kenneth P. Childs  
Childs Law Firm, LLC  
1800 Blankenship Rd, Ste. 200  
West Linn, OR 97068-4174

Coleen Severence  
15334 NE O'Neill HWY  
Redmond, OR 97756

SARAH FLYNN  
DOJ-Ust  
C/O Johnson, Linda D  
700 Stewart Street  
Seattle, WA 98101-4439

Federal Ag. Mortgage Corp. Programs  
500 Fifth Street  
Ames, IA 50010-6063

Francis Hansen & Martin  
Attn: Martin Hansen  
1148 NW Hill St  
Bend, OR 97703-1914

GP LLC  
8611 NE Ochoco Hwy  
Prineville, OR 97754-7975

GP LLC  
c/o Howard M. Levine  
Sussman Shank LLP  
1000 SW Broadway, Suite 1400  
Portland, OR 97205-3089

MARTIN E HANSEN  
1148 NW Hill St  
Bend, OR 97703-1914

NICHOLAS J HENDERSON  
Motschenbacher & Blattner, LLP  
117 SW Taylor Street  
Ste 300  
Portland, OR 97204-3029

Harvey C. Thun  
3790 SW Gene Sarazan Dr.  
Redmond, OR 97756-7403

Hooker Creek Companies, LLC  
95 SW Scalehouse Lp., Ste. 100  
Bend, OR 97702-1224

(p) INTERNAL REVENUE SERVICE  
CENTRALIZED INSOLVENCY OPERATIONS  
PO BOX 7346  
PHILADELPHIA PA 19101-7346

IRS  
Centralized Insolvency Operation  
PO Box 7346  
Philadelphia, PA 19101-7346

Jacolyn Alves  
2312 Condor Dr.  
Redmond, OR 97756-1263

HOWARD M LEVINE  
1000 SW Broadway #1400  
Portland, OR 97205-3066

Les Schwab  
PO Box 3530  
Bend, OR 97707-0530

Mid Oregon Fcu  
Po Box 6479  
Bend, OR 97708-6479

Mid State Fertilizer Co  
120 SE Glacier Ave.  
Redmond, OR 97756

ODR Bkcy  
955 Center St NE  
Salem, OR 97301-2555

ODR Bkcy  
955 Center NE, #353  
Salem, OR 97301-2555

KATHRYN PERKINS  
DOJ-Ust  
700 Stewart Street  
Suite 5103  
Seattle, WA 98101-4438

Christian S. Radabaugh Sr.  
15334 NE O'Neil Hwy  
Redmond, OR 97756

TROY SEXTON  
Motschenbacher & Blattner, LLP  
117 SW Taylor St  
Ste 300  
Portland, OR 97204-3029

Synchrony Bank/Lowes  
Attn: Bankruptcy Dept  
Po Box 965060  
Orlando, FL 32896-5060

Terrence B O'Sullivan  
Merrill O Sullivan, LLP  
805 SW Industrial Way, Suite 5  
Bend, OR 97702-1093

US Trustee, Portland  
620 SW Main St #213  
Portland, OR 97205-3026

(p)WELLS FARGO BANK NA  
1 HOME CAMPUS  
MAC X2303-01A  
DES MOINES IA 50328-0001

Western Heavy Haul  
PO Box 672  
Prineville, OR 97754-0668

Zions Agriculatural Finance  
500 5th Street  
Ames, IA 50010-6063

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

IRS  
Attn: Attorney General of United States  
10th Constitution NW #4400  
Washington, DC 20530

Wells Fargo Bank  
Attn: Bankruptcy Dept  
Po Box 6429  
Greenville, SC 29606

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)GP LLC

(d)ODR Bkcy  
955 Center St NE  
Salem OR 97301-2555

(d)Western Heavy Haul, Inc.  
PO Box 672  
Prineville, OR 97754-0668

End of Label Matrix  
Mailable recipients 41  
Bypassed recipients 3  
Total 44